IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2401 OF 2007

P.A. Inamdar and others .. Petitioners
v/s.
The State of Maharashtra and others .. Respondents

Mr. Girish Kulkarni with Mr. Ramchandra Jadhav for the petitioners.
Mr. A.A. Kumbhakoni, Assistant Advocate General with Mr. V.P. Malwankar, Assistant Government Pleader for the respondent Nos.1 and 2.

CORAM : F.I. REBELLO AND
R.M. SAVANT, JJ.
DATED : 13TH APRIL, 2007

P.C.

Rule. Heard forthwith.

2. The petitioners approached this court against the order communicated to the petitioners by respondent No.3 by communication dated 22nd March, 2007, that the Samiti at its meeting held on 6th March, 2007 has rejected the request of the petitioners to hold the separate CET for admission to First Year BDS Course to petitioner No.3 college. Petitioner No.3 has been directed to join either the ASSO-CET-2007 or MHT-CET-2007 for admissions to the similar course and inform the Samiti accordingly.

3. On behalf of the petitioners, their learned counsel submits that

they have been admitting students right from the year 2001 based on the examination conducted by them. It is submitted that only from the academic year 2004-05 permissions is being refused to the petitioner No.3 institution. Relying on para 137 of the judgment in P.A. Inamdar & ors. v. State of Maharashtra & ors., 2005(6) SCC 537, it is pointed out that minority unaided institutions can legitimately claim an unfettered fundamental right to admit students by following a procedure which is fair, transparent and non-exploitative. It is pointed out that against the decision of the samiti, not permitting them to hold their own CET, they had preferred a petition before this court, being writ petition No.1454 of 2004. That was dismissed by the order of this court dated 7.5.2004. The petitioners aggrieved by the said order, approached the Hon'ble Supreme Court by preferring Special Leave to Appeal (Civil) No.9932 of 2004 wherein the Supreme court by order dated 28.5.2004 permitted the petitioners to hold the common entrance test but the admissions to be made on the basis of such entrance were to be provisional and subject to further order of the Supreme Court. The Hon'ble Supreme Court thereafter passed further order which is reported in 2004(8) SCC 139. The petitioners were earlier permitted to fill in 75% quota, based on their entrance test or MEMCET which will be held by them for the year. For the academic year 2006, the petitioners again approached the Samiti which rejected their application. The petitioners approached this court by way of writ petition No.3417 of 2006, which petition was rejected on 16th May, 2006. Against that, the petitioners preferred Special Leave Petition No.9652 of 2006. By order dated 12.6.2006, the petitioners were permitted to follow the procedure adopted in the previous academic year 2005-2006. The matter thereafter was to be listed in the month of July, 2006. The matter thereafter came up

before the Hon'ble Supreme Court on 17.8.2006. The petitioners had taken out I.A. No.2 in SLP (Civil) 9652 of 2006 to permit them to admit 25% quota as the State Government had not forwarded their candidates for those seats.

4. In the meantime, the Hon'ble Supreme Court in P.A. Inamdar and ors. v. State of Maharashtra and ors. (2005(6) SCC 537in so far as minority non-aided institutions are concerned, have permitted them to fill in the entire quota of seats. In other words, the reservation of 75% and 25% no longer subsists. In para 157 of the same judgment, the various special leave petitions have been directed to be placed before the appropriate Benches.

5. The issue whether the petitioners can conduct their own CET is in issue before the Supreme court. The Supreme Court by various interim orders has been permitting the petitioners to conduct their own CET. Considering that aspect of the matter, the Samiti ought to have considered the said order of the Hon'ble Supreme Court before dismissing the application made by the petitioners herein.

6. On behalf of the State Government, the learned Assistant Advocate General draws our attention firstly to the judgment of the Hon'ble Supreme Court in Islamic Academy of Education v. State of Karnataka, (2003) 6 SCC 697 and to para 16 of that judgment and thereafter, to the judgment in P.A. Inamdar (Supra) at para 136. In our opinion, today three different tests are permitted; (i) tests to be conducted by the State (ii) tests to be conducted by the Association of Private Medical Association and (iii) tests to be conducted by minority institutions having more than 25 years of experience in conducting the

tests. The issue whether a non-aided minority institution like petitioner can conduct their own test, is for consideration before the Supreme court in the pending SLPs.

7. In the light of that, in our opinion, considering that the SLP is still pending before the Supreme Court on the question whether the institution like the petitioner can conduct their own CET and as the petitioners so far have been permitted to conduct their own CET, the ends of justice would be met, if the impugned order is set aside and petitioners are allowed to hold their own CET in similar term as allowed by the Hon'ble Supreme Court. We make it clear that this should be subject to the order which the Hon'ble Supreme Court would pass.

(F.I. REBELLO, J.)

(R.M. SAVANT, J.)